LETTER

FROM

AN OLD FREEHOLDER

TO

HIS FELLOW FREEHOLDERS,

REFUTING

THE PRINCIPLES OF THE BILL APPROVED BY THE MEETING OF DELEGATES HELD AT EDINBURGH, IN DECEMBER LAST, FOR REGULATING THE COUNTY ELECTION LAWS IN SCOTLAND;

AND PROVING IT TO BE

A TOTAL *SUBVERSION* OF THE ANCIENT LAW WHICH THE SUPPORTERS OF IT *SAY* THEY MEAN *ONLY* TO *RESTORE*, &c. &c.

TO BE HAD OF MR CREECH.

APRIL 1793.

To the FREEHOLDERS of SCOTLAND.

GENTLEMEN,

AMONGST the ſchemes of reformation, or rather innovation, that have of late been induſtriouſly ſupported, the moſt intereſting and important is the Plan for an alteration of the Laws reſpecting the Elections of Repreſentatives in Parliament for the Counties of Scotland.

As many of you, from diſtance of ſituation, may not have had ſufficient opportunity to conſider this matter, and may poſſibly be haſtily drawn into reſolutions or meaſures, which, if ſufficiently informed, you would ſee cauſe to reject, I beg leave to ſubmit to you ſome Remarks on the origin and mode of proſecuting the propoſed alteration, the principles aſſumed for it, and the meaſures ſuggeſted for carrying it into execution.

The undue multiplication of Votes at County Elections, by the creating fictitious or confidential Qualifications, under the colour of Liferents and Wadſets, and even Fees of Superiorities, granted for the purpoſe of increaſing the political influence of great proprietors, had been juſtly complained of as an abuſe of the law, and no man has felt a greater diſlike of ſuch practices than myſelf. To remedy ſuch evils, draughts of Bills had, at different periods, been framed by individuals; but in the mean time, certain deciſions were given, particularly in the laſt reſort, which ſo explained the law reſpecting thoſe kinds of qualifications, as it was generally thought would ſuperſede the neceſſity of a new ſtatute.

It occurred, however, to ſome Gentlemen, that an act of Parliament was ſtill neceſſary; and with a view to obtaining it, they conceived a plan of procedure of a new kind. Inſtead of either directly framing the heads of a bill, and ſending it to the Counties for their conſideration at their regular meetings, and leaving it to them to decide upon it there, or ſeparately to take ſuch meaſures as they might think fit, and to inſtruct their Repreſentatives in Parliament accordingly, they propoſed to diſcuſs the matter primarily in a ſort of *Inferior Parliament at Edinburgh*. Having too, as it ſeems, no hopes of carrying with them the ſentiments of the Freeholders of Scotland if convened by themſelves, they recommended an Election of five Delegates from each County, to be made by the General Meetings of the whole Heritors, conſiſting, as explained by them, not only of Freeholders, but of Commiſſioners of Supply, and even of ſuch as were qualified to be appointed or named Commiſſioners of Supply.

Many of the Counties complied with this recommendation, by chuſing Delegates; and it is believed ſome of them may have done ſo chiefly with the view of ſending proper perſons to attend to the proceedings, who might poſſibly be able to moderate any meaſures propoſed, which, in their opinion, went beyond the neceſſity of the caſe. The Delegates, or a certain number of them, convened at Edinburgh in July laſt,

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and named a Committee to prepare the Draft of a Bill for altering and amending the Laws with reſpect to County Qualifications in Scotland, who were directed to report to another Meeting of the Delegates in December laſt.

At this General Meeting in December, about 80 Delegates only attended, though their number ſhould have been 165. A draught, or heads of a Bill, was laid before them by the Committee, of a very extraordinary nature, as not being framed merely for the purpoſe of correcting any abuſes that had been committed under the eſtabliſhed laws of election, and reſtoring them to their true import, but at once to make great alteration in the Conſtitution itſelf, by aboliſhing all Qualifications of Freeholders founded on rights of *ſuperiority* of any kind:—To lower the Qualification of a Voter on the valued rent, from L. 400 Scots to L. 100 Scots;—and to compel Superiors to diſpone their ſuperiorities to their vaſſals at a price thereby fixed. Upon this Bill the Meeting, as might well have been expected, differed in opinion; and upon a vote put, the majority approved of the preamble of the bill, as expreſſing its principle, and reſolved to tranſmit the ſame to the *Freeholders, Commiſſioners of Supply*, and Heritors *intitled* to be Commiſſioners of Supply, together with the remaining clauſes of the Bill for their information, as to the mode which had occurred to the Committee for carrying theſe principles into execution. On the other hand, a draught of another Bill, tendered by a moſt reſpectable Gentleman,* and formed on the principle of only correcting former abuſes as to nominal and fictitious Qualifications, was rejected by the ſame majority, who even *refuſed* to tranſmit it to the conſideration of the Counties, becauſe (as ſome of that majority have ſince expreſſed themſelves †) they diſapproved of its principle, and diſregarded it *as unworthy of notice.* The Delegates then concluded their ſeſſion, by ordering the ſame kind of County Meetings as had nominated themſelves, to take this favourite draught of a Bill into conſideration on the 30th April, and to make a new election of Delegates to meet at Edinburgh on 30th May next, with powers to carry a Bill into Parliament, in conformity to the ſentiments of the majority of the Counties expreſſed in their reports.

Having thus related briefly the progreſs of this matter, it will be proper for you, in the firſt place, to conſider, whether it has been proſecuted ſo far in a legal mode, and whether you have cauſe, either in expediency or law, to perſiſt in following out that mode.

On this head, it may be firſt obſerved, That the majority of the laſt ſet of Delegates have not been baſhful in the exerciſe of the powers with which they underſtood themſelves to be veſted; for, without previous inſtructions from their conſtituents to that effect, they have laid aſide and even *refuſed to tranſmit* for conſideration former plans of amending the abuſes hitherto complained of, and at once made a direct attack upon the eſtabliſhed Conſtitution, as well as on the property of all the Freeholders of Scotland, by propoſing to reduce the Qualification from L. 400 Scots to L. 100 Scots, and to appropriate the right of voting to thoſe poſſeſſed both of the property and ſuperority of lands to that ſmall ex-

* Mr Smyth of Methven.

† Vide printed Anſwers to the Reſolutions of the County of Edinburgh, par. 2.

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tent, and where held of ſubjects ſuperior to compel the ſuperiors to qualify their vaſſals as *Freeholders*, by conveying to them the ſuperiority of their lands at a given price. Nay, ſome of that majority who have publiſhed the anſwers above referred to, have gone the length to aſſert, *That they have pledged the Counties* * to ſtand by the principle of their Bill, as ſtated in its preamble, which goes the whole length above deſcribed; ſo that if they can maintain this propoſition, you are to be already bound, without your previous knowledge, to concur in ſo violent a meaſure, merely becauſe Delegates appointed to deliberate and adviſe you on the ſubject have by a majority ſo determined.

This ſtretch of power will naturally lead you to conſider, whether the Conſtitution of ſuch a Convention is warranted by the law of the land. The act of Parliament 1587, (which the members of the Convention hold forth as having made the Conſtitution they mean to *reſtore*), when it appointed County Meetings for chuſing Commiſſioners to Parliament, found it neceſſary, in ſo many words, to declare *theſe Conventions to be lawful*, which implied, that otherwiſe, even ſuch County Meetings would have been unlawful, as not legally authoriſed. The annual Convention of the Royal Burghs of Scotland, the only one of the kind hitherto known in this country, likewiſe required the warrant of ſundry Acts of Parliament to ſanction it, and at ſame time to regulate the matters on which its members ſhould deliberate. Had a ſeparate Convention of *Counties*, or Delegates from them, been thought proper, undoubtedly the Legiſlature would have been equally poſitive in the appointment of ſuch a Meeting; but no traces of it are to be found in the Laws or uſage of the Country. Meetings of Freeholders in each County, for adjuſting their rolls and electing their Repreſentatives in Parliament, and alſo larger Meetings, compoſed of Freeholders, Juſtices of the Peace and Commiſſioners of Supply, for directing the reparation of roads and bridges, &c. have indeed been appointed by ſtatutes; and there ſeems nothing illegal in ſuch Meetings, when once lawfully convened, deliberating likewiſe on other matters of general concern. But theſe are ſtill only Meetings of Heritors within their own Counties, not Meetings of Delegates from the whole, or any number of Counties aſſociated together. It is in Parliament alone that the Counties can collectively aſſemble by their Repreſentatives, along with thoſe of the reſt of the nation. Thoſe Counties who ſent Delegates to the laſt Convention, were not, it is believed, aware that the majority of ſuch Delegates would talk, as they have ſince done, of *pledging* the whole ſhires in Scotland to aſſume and follow out the principle of the Bill they have framed for them, even before the bulk of the Heritors knew any thing of its import. If the powers of Delegates are to be ſo great, it behoves the Counties to be much more attentive in the choice of ſuch new repreſentatives than they have yet been; as otherwiſe they may become bound to important engagements, without previous knowledge or apprehenſion of them.

Were it neceſſary to ſatisfy perſons of your rank and abilities of the dangerous conſequences that may flow from ſuch Conventions, by other examples, we might refer you to what has been paſſing in a neighbouring country, through the medium of ſelf-created Societies, and Delegations from them. Even in our own country, the period is recent, when Societies of profeſſed Reformers choſe Delegates to meet in

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* Vide Anſwers before referred to.

General Convention and to organiſe themſelves and their Conſtituents; and it is remarkable, that ſome of them in their publications referred to your late County Convention, as an example favourable to their plan. It is obvious, that Meetings of Societies or bodies of men, by Delegates of a projecting turn, are more hazardous than Meetings of the detached Conſtituent Societies or bodies by themſelves; becauſe it is a mode of linking ſuch bodies together on whatever deſign is in view, and renders the opinion of a ſmall number of individuals a rule for the whole. I am well aware that there are individuals with whom this doctrine will be unpopular, and who may be favourers of Conventions, as tending, on ſome occaſions, to good purpoſes; but every friend to the Conſtitution ought to reſiſt innovations and novelties, when it appears that they may be perverted to the advancement of plans ſubverſive of good order, and even government itſelf.

It is a matter of ſtill more ſerious concern to you, the preſent Freeholders of Scotland, if your property and invaluable privileges are to be diſpoſed of by Delegates choſen in the manner that the former Delegates have been pleaſed to direct. In that choice, as well as in deliberating on the Bill tranſmitted to your Counties, you are to be *lumped* with the whole Commiſſioners of Supply, and all others entitled to be made ſuch Commiſſioners. You are then to vote *per capita* along with perſons in general *thrice* your number, who are moſtly either your own vaſſals, or thoſe of other ſubject ſuperiors, and as ſuch immediately intereſted in this queſtion againſt you; as by the plan of this Bill, they are to get your ſuperiorities and freeholds adjudged to themſelves. It is true, that they are in general a very worthy and reſpectable ſet of men; but not many, even of the beſt men, are altogether proof againſt the bias and influence of ſelf-intereſt, eſpecially in a caſe of this nature. Nor can it be expected, that the majority of them in all the Counties will act in as diſintereſted a manner as the Commiſſioners of Supply of the County of Edinburgh have done in this matter: for theſe Gentlemen have concurred with the Freeholders in reſolutions totally adverſe both to the principles and clauſes of the Bill, and have concluded with a declaration that muſt operate more forcibly on your minds than any reaſoning of a private individual. Their words are: "In addition to this Report on the merit of the two Bills, the Commit-
" tee ſubmit, that they entertain great doubts of ſending Delegates to the Meeting
" appointed for 30th of May next. In the preſent ſituation of this country, they
" wiſh not to give their ſanction to General Conventions, for the purpoſe of Reform.
" They do not ſee any good that can ariſe from it; for the buſineſs can be more
" fully and better inveſtigated in each County, where Freeholders and Commiſſioners
" of Supply form a legally conſtituted Meeting; but they have no powers by law to
" ſend Delegates to any Convention. The only legal delegated Body is the Houſe
" of Commons; and each County can give inſtructions to its Repreſentative, by which
" mode, the general wiſh of the country may be obtained in a conſtitutional man-
" ner."

Here, leaving this matter of the Convention of Delegates to your conſideration, I ſhall proceed to ſtate ſome Obſervations on the principles of the Bill framed by the former Delegates. They are pleaſed to ſtate, in ſubſtance, That by the ancient conſtitu-

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tion of Scotland, the Freeholders originally bound to attend in Parliament, and who afterwards, by the act 1587, were authoriſed to elect Commiſſioners to Parliament, held the ſubſtantial right or property of the lands veſted in them: That by the ſaid act 1587, the Qualification for electing, or being elected, was aſcertained to be the holding in free tenantry of the King a Forty-ſhilling land, or upwards, of old extent, which is ſaid to be now nearly equivalent in value to lands ſubject to ceſs and public burdens for L. 100 Scots of valuation: That, by the later act of Parliament 1681, the right of voting was declared to be only in thoſe who were publicly infeft in property or *ſuperiority*, and in poſſeſſion either of a forty-ſhilling land of old extent, holden of the King or Prince, or, where the old extent appears not, of lands liable in public burdens for L. 400 Scots of valued rent; and that, under this laſt act, (which is the ſubſiſting rule), Qualifications being *extended* to rights of ſuperiority, theſe have ſince been unduly multiplied, whereby it is ſaid a great part of the landed property of Scotland, held by the vaſſals of ſubject ſuperiors, *is not repreſented in Parliament*. Therefore it is propoſed by this Bill, to confine the right of voting to perſons ſaid to have the ſolid and ſubſtantial intereſt in the lands; or, where the proprietor does not hold immediately of the Crown, to the vaſſals of ſubject ſuperiors, inſtead of thoſe ſuperiors; and to reduce the Qualification, where it depends on the valued rent, from L. 400 Scots of valuation to L. 100 Scots, as, at a medium, correſponding to a forty-ſhilling land of old extent.

The firſt obſervation that here occurs is, that the Conſtitution of Scotland, in its moſt important branch of Repreſentation in the Parliament of Great Britain, was moſt ſolemnly ſettled by the Treaty of Union between the two Kingdoms in 1707. By the 22d article of that Treaty, it is provided, That the Members for Scotland to ſit in the Houſe of Commons, are to be elected in ſuch manner as by a ſubſequent act, to be paſſed in the then Parliament of Scotland, ſhould be ſettled; and which act is thereby declared to be as valid as "*if it were a part of and ingroſſed in this Treaty.*" And accordingly ſuch an act was paſſed in that Parliament, being the 7th act 1707; whereby it is expreſsly enacted and declared, "That none ſhall be capable to elect, or be "elected as Commiſſioner to repreſent a Shire or Burgh in the Parliament of Great "Britain for this part of the united Kingdom, except ſuch as are *now* capable, by "the Laws of this Kingdom, to elect, or be elected, as Commiſſioners for Shires or "Burghs to the Parliament of Scotland." Now the Qualification of the Electors, or elected, having been laſt ſettled by the above-mentioned act 1681, it is that act which makes the ſubſiſting law here referred to; and down to this day it has been inviolably obſerved as the eſtabliſhed law, not only in all the deciſions of the Courts of Juſtice, but in all the ſubſequent Britiſh ſtatutes reſpecting Elections, which have been only paſſed to explain and enforce that act 1681, according to its true meaning and import, and not to repeal or encroach upon it in the ſmalleſt degree. When therefore the act 1681 gives the Qualification to the immediate holders from the King or Prince, of either the property or *ſuperiority* of forty-ſhilling lands of old extent, or of lands valued in the ceſs-rolls at L. 400 Scots, is it compatible with the act 1707, declared

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to be a part of the Treaty of Union, to deprive Freehold Superiors of their right of voting, and transfer the ſame to their Vaſſals, or to reduce the amount of the Qualification from L. 400 Scots to L. 100 Scots? Such a violent alteration is an evident breach of the Union, which it is doubted if the Britiſh Parliament would think fit to ſanction, even if it were conſented to by every perſon in Scotland intereſted in it.

2*do*, Suppoſing this objection could be got over, this Bill does not go merely to *amend* our Scots Election Laws, but to *ſubvert* the very original principle of them. From the earlieſt exiſtence of parliaments or general councils in Scotland, the immediate vaſſals of the Crown were the only heritors of lands intitled to ſeats in Parliament, as in right of thoſe lands, whether the ſame were actually occupied and poſſeſſed by themſelves, or by others under them in their right. Every perſon within the lands, as well as the lands themſelves, was held to be repreſented by the Crown's immediate vaſſal in them; and the like continued to be the caſe after the Crown's vaſſals were authoriſed to elect Commiſſioners or Repreſentatives to Parliament. None but the Freeholders or immediate Vaſſals of the Crown were intitled to elect or be elected; and it never entered into the heads of any vaſſals of ſubject ſuperiors, that they themſelves, or the lands they poſſeſſed, were not repreſented in Parliament, becauſe they had no vote in the election, any more than temporary tenants, or other poſſeſſors under the Crown's vaſſal. They had obtained their feus or inferior holdings on theſe terms; and without manifeſt injuſtice to their immediate ſuperior, and a direct breach of their contract with him, they could not lay claim to a privilege which, by private compact as well as by public law, had been reſerved and appropriated to him. What violence, then, muſt be done to the very nature of the feudal contract, as well as to the ancient conſtitution of the country, if our modern innovators ſhall prevail in transferring the right of election from the Freeholder or immediate vaſſal of the Crown to his own ſubvaſſal. The means, too, for accompliſhing or rather covering this innovation, (independent of their groſs injuſtice, to be hereafter noticed), are totally inconſiſtent with the principles of our common law reſpecting land rights. The Crown is to be declared the immediate ſuperior of the preſent ſubvaſſal, and to grant him a charter for the purpoſe allenarly of making him a *nominal* Freeholder, and thereby enabling him to vote; but this ſame voter is ſtill to hold his lands in all other reſpects of his former ſubject-ſuperior, to whom his feu-duties, and all other caſualties of ſuperiority, are ſtill to be due and preſtable. Thus there are to be double ſuperiors, double vaſſals of the Crown, and in ſome caſes double voters on the ſame lands, to the utter ſubverſion of the eſtabliſhed principles of our law, and the introducing endleſs confuſion in our land-rights.

3*tio*, The ſupporters of this ſcheme have ſaid, that the act 1681, which has formed the baſis of the election-code for twenty-ſix years before the Union, and fourſcore and ſix years ſince, was paſſed in the time of *Ariſtocratic Deſpotiſm*; and that though they wiſh to abrogate that act in ſundry reſpects, they only mean to recur to the principle of the prior act of Parliament 1587, and therefore do not *innovate* or *alter* the *fundamental* Conſtitution of Scotland as to matters of Election, but merely endeavour to *reſtore* them to that footing *.

But,

* Vide Anſwers before referred to.

But, with great deference to thoſe Gentlemen, their language is a mere deception, and entirely founded in miſtake. Though the act 1681 was paſſed in the reign of Charles II can it be denied, that it was continued in full force, as the beſt ſyſtem of our Election Law, during the reigns of King William and Queen Anne before the Union; that it was ſolemnly ſanctioned by that Treaty, which made it a perpetual rule in future; and that it has been ſtrictly adhered to in all the later reigns down to this day? or will the ſupporters of innovation preſume to characteriſe this long period of true liberty ſince the glorious Revolution in 1688, as likewiſe times of *Ariſtocratic Deſpotiſm?* — Neither are they leſs miſtaken when they pretend to found their ſyſtem on the act 1587, which firſt eſtabliſhed the Repreſentation of Counties by Commiſſioners. That act declares, That none ſhall have votes but the King's *Freeholders*, or ſuch as have a forty ſhilling land holden of the King in *free tenandry*; but it neither expreſſes nor implies, that all ſuch Freeholders ſhould have what is now called the moſt ſubſtantial intereſt in the lands, or the property thereof, as well as the ſuperiority. On the contrary, it is indiſputably clear, that at the date of that act the right to the *dominium directum*, or ſuperiority of a forty-ſhilling land, was as good a freehold-qualification as it was declared to be at the date of the ſubſequent act 1681.

To demonſtrate this, we need only enquire, Whether, at and before the act 1587, lands were in uſe to be ſubfeued by the Crown's immediate vaſſals? and of this fact the many acts of Parliament paſſed ages before the act 1587, for encouraging the grants of ſuch ſubaltern rights in lands, bear irrefragable teſtimony. So early as the 71ſt act, Parliament 1457, being 30 years before the act 1587, a recommendation was made by Parliament to King James II. and his immediate vaſſals, to grant feus, in theſe words: "As anent *feu*-farm, the Lords think it ſpeedfull that the King begin "and give example to the lave; and what Prelate, Baron, or *Freeholder* that can ac- "cord with his tenant, upon ſetting of feu-ferme of his own land, *in all* or in part, "our Sovereign Lord ſhall ratify and approve the ſaid aſſedation;" and ſuch feus are declared to be ſecured againſt the ward. By the act 90th, Parliament 1503, King James IV was empowered to ſet *all* his property in feu-farm, without diminution of the rental; and by act 91ſt of the ſame year, it was enacted, that, "Ever "ilk Lord, Baron, *Freeholder* whatſomever, Spiritual or Temporal, ſhall have "power (during the King's life) to ſet *all* their lands in feu farme, or annualrent, "to any perſon or perſons, ſo that it be not in diminution of the rental, ſwa that "the alienation ſo made of the maiſt part of all their lands, ſhall be na cauſe of fore- "faulter neither to the ſetter nor to the taker, notwithſtanding any ſtatute or laws "made in the contrair."—And although this act was limited to the lifetime of King James IV. the practice of the Freeholders or Crown vaſſals granting feus continued ever after, and was recogniſed by a variety of ſubſequent ſtatutes relative to that matter. Indeed, numberleſs proprietors, who now hold lands of ſubject ſuperiors, derive right from the original obtainers of feus within that long period prior to the act 1587.

While thus, for the better improvement of the country, the *Freeholders*, or King's vaſſals

vaſſals, were allowed, and even *invited*, to feu out *all* their lands, as well as any part of them, upon the idea, and a juſt one too, that the right of feuers or ſubvaſſals being perpetual, would induce them to better cultivation of their poſſeſſions than could be expected from temporary tenants; yet the thought never was conceived, far leſs expreſſed, that ſuch ſubaltern rights, which in law were only burdens upon the ſupereminent right of the *Freeholder*, or retainer of the ſuperiority, could ſubſtitute the feuer in his place, ſo as any ways to diminiſh his legal powers and privileges as the Crown's immediate vaſſal. On the contrary, no alteration whatever was thereby made in the ſubject ſuperior's condition, as tenant *in capite*, or Freeholder. Such ſuperiors continued to ſit in Parliament down to the 1587; and thereafter retained and enjoyed all their conſtitutional privileges, particularly that of electing or being elected Commiſſioners to Parliament, which, by the act 1587, was declared to belong to the King's immediate tenant, without diſtinguiſhing whether he ſtill held the property, or *dominium utile* of his lands, or had feued them out to others as vaſſals under him. It is obvious, therefore, that the preſent ſcheme of alteration by a conjunction of the ſuperiority with the property in the perſon of the ſubvaſſal, and the transferring the right of voting from the firſt to the laſt, is the reverſe of *a reſtoration* of the Conſtitution as it ſtood in 1587, and is truly *a ſubverſion* and *overthrow* of the Conſtitution, in that reſpect, as it ſtood from the earlieſt period. And therefore, ſince the authors of this Bill tell us, "*that no fundamental alteration* "ſhould be introduced;—and that they had, on that account, pointed out the old law "made in 1587, as the foundation of that now to be made *," I truſt they will have the candour and conſiſtency to abandon their ſcheme. At all events, you, Gentlemen, and all friends to the ſyſtem of our Land rights and to the Conſtitution, are called upon to reject it.

As to the other great alteration propoſed in this Bill, by reducing the amount of the qualification upon valued rent from L. 400 Scots to L. 100 Scots, the preſent Freeholders on the roll are leſs intereſted in it than in what has been above conſidered, providing the perſon who is to uſe or enjoy ſuch qualification is already the immediate vaſſal of the Crown, holding his lands, whether in property or ſuperiority, directly from the Crown, without compelling his former ſubject ſuperior to transfer that ſuperiority to him. But when the authors of the Bill talk of this alteration, as likewiſe a *reſtoration* of the ancient Conſtitution as it ſtood by the act 1587, they merely go upon aſſuming this propoſition, that the qualification required by that act, being a forty-ſhilling land of old extent, was not then more conſiderable than lands preſently valued in the ceſs books at L. 100 Scots.

This, however, is at leaſt extremely doubtful; for in the year 1587, the new valuation, by which the land-tax is now levied, had not been made; and as the ſubſequent act 1681 put the new valuation of lands, to the amount of L. 400 Scots, upon the ſame footing with a forty-ſhilling land of old extent; and as the Legiſlators 1681 were a-

* Vide their Anſwers, before referred to, par. 3.

bove

bove one hundred years nearer to the period of the act 1587 than we now are, it is reaſonable to ſuppoſe, that they knew better than we do how to equaliſe the rates appointed for Qualifications. It is believed, too, that even at this day the generality of forty ſhilling lands are equivalent in value to much more than lands valued in the ceſs-books at L. 100 Scots, and ſome of them equal to lands valued at L. 400 Scots. At any rate, this propoſed reduction, from L. 400 to L. 100 Scots, cannot be made without ſuch an innovation as will ſo far overthrow both the act 1681, and the Treaty of Union referring to it, and alter a material part of the Conſtitution, after it has ſubſiſted for one hundred and twelve years.

4*to*, To return to the more important alteration of ſuppreſſing qualifications on ſuperiorities of lands, and confining the privilege to thoſe holding property and ſuperiority conjoined, let us ſee how this extraordinary revolution in the legal rights of men is propoſed to be effectuated. Is the lawful ſuperior of the lands, who had, by voluntary deed or covenant, ſubfeued them to a vaſſal, from whom they might poſſibly return to himſelf by feudal delinquency, without his paying any price for them, to be obliged or be intitled to redeem the burden on his ſupereminent right, upon payment of an equivalent to ſuch vaſſal? No!! Theſe pretended aſſertors of the *rights of man* are in this reſpect to break over the firſt and plaineſt principles of law and juſtice. The true original Freeholder, who, in the perſon of himſelf or his authors, once held the entire property of the lands immediately from the Crown, and is ſtill the only vaſſal in them known or acknowledged by the Crown, and whom the legiſlature, during centuries paſt, had invited and encouraged to grant to his tenants, inſtead of temporary, perpetual hereditary leaſes of his lands, in name of ſubinfeudations, under reſervation of all his feu-duties and caſualties, as ſuperior or over-lord, and particularly of his invaluable privilege of electing or being elected to Parliament, as holding the only legal qualification in the eye of law, is now, without his conſent, and againſt the terms and import of his contract with his feuer or ſubvaſſal, to be directly compelled to ſurrender his ſuperiority, with the ſame invaluable privileges, for the purpoſe of transferring to and inveſting them in his own vaſſal; nor is that vaſſal at the ſame time bound to accept of it, unleſs he pleaſes to demand the ſurrender! Thus, one *individual*, whoſe property and eſtate for ages paſt was held to be of the firſt importance, is to be made ſubſervient to his own tenant, and to be, at his pleaſure, forfeited or deprived of that property againſt his will, for the ſole benefit of another *private* individual of a ſubordinate order, and in ſome degree depending upon himſelf.

By whom, too, is the conſideration allowed to this unfortunate ſuperior to be ſettled or aſcertained in the firſt inſtance, and under the ſanction of whoſe approbation is this plan of arbitrary forfeiture to go to Parliament? It is by the *very perſons* who are to have the immediate benefit of the *transfer*, or to obtain that very right which the other is to be deprived of. For, as already ſhewn, it is not by the voice or conſent of you, the preſent Freeholders, that this great alteration of legal and conſtitutional right is to be ſuggeſted to Parliament, but by the voices of the Commiſſioners of Supply, and of Heritors entitled to be Commiſſioners of Supply, being the only perſons, to whom, by the extent of the propoſed qualification, the privileges and freehold of which you are to be deprived will directly accrue.

It is ſurely adverſe to the plaineſt rules of reaſon and juſtice between man and man, to call upon perſons who, in the conjoined meetings with yourſelves, are *thrice* your number, to judge of the propriety and expediency of ſtripping you of your property and freehold, and even to put a value on that property, for the purpoſe of wreſting it from you at that price, and transferring it to themſelves ! ! In fine, The principle aſſumed in this Bill, the mode propoſed for carrying it into effect, and, in ſhort, the whole ſyſtem, wears ſo *invading* an aſpect, and is ſo hoſtile to the ſecurity of property, that I am confident no uninfluenced Britiſh ſubject can contemplate it, or the conſequences that might attend it, if ſucceſsful, without feeling the ſtrongeſt degree of horror and conſternation.

It is a fundamental principle of the Law and Conſtitution under which we live, that no innocent perſon's property or right can be taken from him without his conſent, unleſs by the authority of Parliament, for the evident advantage of the Public; and that even then it cannot be done without giving him a full and adequate compenſation, to be ſettled either by a bargain, or a court of juſtice, or an impartial jury of his country. Here, on the contrary, ſuperiors are to be deprived of their freeholds on receiving a price previouſly ſettled in the Bill itſelf, at one general rate of L. 200 Sterling for a valuation of L. 400 Scots, apportioned for all ſuperiorities whatever, without diſtinction of circumſtances attending any of them, and without the intervention of Judge or Jury.

It is notorious, that many ancient rights of ſuperiority, ſome of which have ſubſiſted for ages diſtinct from the right of property, have been lawfully bought and ſold, either by auction or private bargain, where the price or conſideration given for the legal qualification alone, independent of the value of the feu-duties and caſualties, has been vaſtly beyond the above-mentioned rate; and yet theſe *bona fide* purchaſers, whoſe rights are unqueſtionably good as the law now ſtands, are, by this unprecedented plan, to forfeit and loſe entirely, not only their Freeholds, but the ſums, however large, they paid for acquiring them, beyond that arbitrary and moſt unjuſt rate, or which they might yet gain even beyond what they paid, were they again to expoſe their ſuperiorities to ſale upon the footing of the preſent ſubſiſting law of the land. Nor is the hardſhip leſs, when the caſe of recent feus, made ſhortly before this Convention exiſted, is duly conſidered. Many Freeholders, poſſeſſed of landed eſtates, have very lately made ſales by bargain of the property of conſiderable parts of their lands, to be holden of themſelves, and in conſequence of their retaining the ſuperiority, have parted with the property of thoſe lands at a very low price, compared with what they might have got if the lands had been diſponed to hold immediately of the Crown. Yet a Freeholder, in ſuch ſituation, if this Bill of reform can be carried through, is to be compelled to make over to the party, who had purchaſed from him only the property, that part of the ſubject, which by the *expreſs covenant between them* he was to retain, with its conſequent privileges; and this transfer he is obliged to make for leſs than a *third part* of what he could have got from the purchaſer by voluntary agreement, had he conſented to convey the freehold, or ſuperiority, along with the property, or than he could now get were he to ſell his ſuperiority by public roup, under the faith and ſecurity of the ſubſiſtence of the preſent Election Law.

After

After all that has been ſaid, there yet remains another circumſtance, to be noticed, which is demonſtrative in the higheſt degree of the abſurdity and injuſtice of this Bill. Suppoſing it to be expedient that the right of voting ſhould be appropriated only to thoſe who have both property and ſuperiority united in them, yet, where is there a particle of juſtice or of reaſon, in giving the preference or option of making that re-union to the holder of the ſubaltern and inferior right for acquiring the ſuperior one, without the conſent of the holder of the latter. If there is a ground in law for aſcertaining which of the two has the beſt claim to acquire from the other, moſt certainly it is the ſuperior, who, both from the nature of their different rights in the lands, and the conſent of the vaſſal expreſſed or implied, when by bargain he acquired the property from him, is beſt intitled to make the re-union in his own perſon. For, as the law now ſtands, in certain poſſible events of the vaſſal incurring feudal delinquencies through non-entry or irritancy, *ob non ſolutum canonem*, the ſuperior is intitled to recover the property from the vaſſal, and to reunite it to the ſuperiority, without payment to him of any price whatever. On the other hand, no caſe is known in law, or ever did exiſt, in which the ſuperiority can, in like manner, accreſce to the vaſſal, excepting in ſuch ſpecial caſes provided for by particular ſtatutes, as that of the clan-act 1715, where, to encourage loyalty in vaſſals of ſubject-ſuperiors, the loyal vaſſal was allowed to obtain the ſuperiority belonging to a perſon attainted, which would otherwiſe have been forfeited from him to the Crown. But, even ſuppoſing no peculiarity or diſtinction in the nature or terms of the feudal holding, would it not anſwer all the profeſſed object of our Reformers, if the baſe vaſſal or proprietor, as he is called, were to be obliged to ſell the property of the lands to his ſuperior, to whom it originally belonged, inſtead of compelling the original proprietor to ſell at an under-rate that ſuperiority he retained, and is now legally veſted in him, as well by his contract with the vaſſal, as by the eſtabliſhed Conſtitution. In both caſes, the conjunction of property and ſuperiority would equally follow; and the only difference is, that by the preſent plan, our Reformers may hope to increaſe their popularity by gratifying the more numerous and inferior claſs of people, more than they could expect to do by the juſt reſtoration of a ſuperior to what once was his own, even at an adequate price.

Laſtly, The other difficulties and inconveniencies which would attend the Convention's projected mode of uniting the ſuperiority with the property of the lands in the perſon of the vaſſal of a ſubject-ſuperior, have been already ſo clearly ſhown in the Report of the Committee of the County of Edinburgh, (already referred to), that very little remains for me to ſuggeſt in addition to the remarks of that reſpectable body. An anſwer to the Report has indeed been prepared and circulated by certain *ci-devant* members of the late Convention; but that anſwer, in ſo far as not clearly refuted by the preceding Obſervations, is ſo inconcluſive as not to require a farther reply. Yet one cannot help obſerving, that the Gentlemen whoſe names are prefixed to the Anſwers, though extremely reſpectable, are not more in number than *fourteen* out of one hundred and ſixty-five who compoſed that Convention; and theſe, too, (as

I ſee publicly ſtated without refutation), ſelected for the purpoſe with diſcerning care *. And that at any rate, the members of a Convention, which had been diſſolved in December laſt, had no right, *qua* ſuch, to ſtep forward in the public character of which they were diveſted, for the ſupport of a ſcheme, which, as individuals and friends of Reform, they had planned, and zealouſly promoted.

But permit me ſtill to add, that the friends of this extraordinary Bill either do not foreſee conſequences, or actually mean to create debate and diſſention upon the ſubject of it, which every well-wiſher to the peace and happineſs of the nation ought at this time ſtudiouſly to avoid. Is this a time when it is expedient to oblige Parliament to withdraw their attention from what is neeedful to maintain the honour of the beſt of Sovereigns, and the preſervation of that happy Conſtitution we enjoy, and the obtaining a ſafe and honourable peace through the ſpirited proſecution of a neceſſary war, and to waſte their time on idle ſpeculations of ſchemes of Reform of that Government which has brought this country to a ſtate of wealth, dignity, freedom, and happineſs, ſuch as no other nation in the world can boaſt of? Beſides, can any friend to this Bill ſeriouſly imagine, that if the approbation of their county-meetings were obtained, and the Bill thereupon ſent to Parliament, it would there meet with no oppoſition ſufficient to defeat it? Does not the Britiſh Senate contain many able and conſcientious men, who, though Engliſh Repreſentatives, would not ſuffer an act relative immediately to Scots affairs, even though conſented to by many of ourſelves, to paſs in Parliament, if it clearly appeared in its tendency to be a breach of the Articles of Union, and of the eſtabliſhed conſtitution, and who have too great honour and virtue to ſuffer the property or freehold of the meaneſt ſubject of the Britiſh empire to be torn from him againſt his will, and beſtowed upon another individual, not more worthy, and ſtill leſs dignified than himſelf, without any urgent neceſſity, without the party injured having a mutual option of purchaſing his opponent's eſtate, and that too at an arbitrary and unjuſt valuation, inſtead of the fulleſt and moſt adequate price or compenſation being aſcertained and allowed, either by a court of juſtice, or a jury of the country. Farther, were it poſſible to ſuppoſe, that objections of this kind would not occur to the moſt ſuperficial obſerver, can the Convention or County-meetings imagine, that ſuch a conſiderable body as the Freeholders and Crown-vaſſals of Scotland will tamely ſtand by and ſee their property and privileges invaded in ſo groſs a degree, without endeavouring to defend themſelves? and will not the doors and ears of Parliament be open to their petitions, and the juſtice of their cauſe enſure them of a complete victory over ſuch a raſh and unprincipled attack?

To conclude: Could it be ſuppoſed for a moment that this Bill, as it ſtands, could be converted into an act of Parliament, every man of underſtanding muſt ſee that the effect of it would be endleſs litigation and confuſion. The reſpondents to the Edinburgh Committee ſay, that at preſent no man *can even conjecture* what the law of election in Scotland is, whereas any lawyer of eminence will require hours to figure

* See Edinburgh Herald, 24th April 1793.

caſe

a caſe under the preſent law which is not already fixed by a deciſion. But if this Bill ſhall paſs into a law, fortunate indeed will that circumſtance be to the practitioners of the law, and to them only.—I hope never to ſee it, for the ſake of my Country; but the youngeſt lawyer now exiſting will have no chance of ſeeing the end of the pleas and diſputes that muſt unavoidably enſue upon it; and much ground will occur to verify the judicious remark made by the Lord Preſident of the Court of Seſſion, in the able ſpeech he, a few months ago, delivered to the Magiſtrates of Edinburgh, and which now ſtands recorded in the books of ſederunt, as expreſſing the ſentiments of all the members of that Supreme Court. "I have only to add (ſays his Lordſhip) upon the ſubject of elections, (another "ample topic of popular diſcuſſion), That if the rights of voting in Counties are to be "altered or explained, and the ancient Conſtitution of our burghs to undergo what is "called *a Reform*, and if the preſent time be proper for ſuch diſquiſitions, this Court "will earneſtly pray, that the following important objects may be kept in view: 1*ſt*, "That the fundamental principles of common law and permanent juſtice between man "and man may be as little exchanged as poſſible for the untried theories of political ex-"pediency: 2*d*, That the multiplication of law-ſuits may be avoided; or at leaſt, that "ſome other Court than this may be found for the deciſion of them; and, 3*tio*, That "the morals of the lower claſs of men in this Country may be kept as free from the ha-"zard of corruption as circumſtances will admit."

I am,

GENTLEMEN,

Your moſt obedient and very humble Servant,

AN OLD FREEHOLDER.